

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

OLIVIA Y., *et al.*

PLAINTIFFS

v.

CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi, *et al.*

DEFENDANTS

**PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR MOTION FOR LEAVE TO
RELEASE THE REDACTED SOCIAL WORK EXPERT REPORT OF DR. LEWIS**

Defendants' response in opposition to Plaintiffs' motion for leave to publicly release the redacted social work expert report of Dr. Lewis ("Lewis Report") fails to present any "good cause," as required, to suppress the report. *See* FED. R. CIV. P. 26(c).

First, there is no basis or precedent for protecting from public release information that simply reflects poorly on Defendants' practices, as Defendants argue. The current Confidentiality Order, which was jointly proposed to the Court by the parties, properly permits the public release of materials related to this lawsuit, apart from "individually-identifying information." (*See* August 5, 2004 Confidentiality Order at ¶ 6) (Ex. B to Pls' Mot.). Defendants' reliance on an undefined "negative impact" and "burden" resulting from media coverage on the redacted expert report are exactly the kind of "stereotyped and conclusory statements" that the Fifth Circuit has stated are insufficient to warrant a Rule 26(c) protective order. *In re Terra Int'l, Inc.*, 134 F.3d 302, 306 (5th Cir. 1998) ("the burden is upon the movant to show the necessity of [a protective order], which contemplates a particular and specific

demonstration of fact as distinguished from stereotyped and conclusory statements.”) (internal quotation marks omitted). No clearly defined and serious injury is even alleged. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994) (“Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure.”) (internal quotation marks omitted).

Secondly, Defendants fail to point to any “individually-identifying information” in the Lewis Report, as redacted, that would “enable a reasonable member of the general public to ascertain their identities.”¹ (Confidentiality Order/Ex. B at ¶ 2.) Defendants’ attempt to expand the scope of the Confidentiality Order based on the unexplained ability of a reporter to somehow determine the children’s identities and on the mere speculation that such reporter might publish additional information enabling the public to identify the otherwise unidentified children is unavailing and should be rejected. There being no particular and specific facts in support, Defendants’ conclusory statements are insufficient to justify further protection. *See In re Terra Int’l, Inc.*, 134 F.3d at 306.

Because the Lewis Report does not include any individually-identifying information protected by the Confidentiality Order in this case, and because Defendants have failed to demonstrate good cause for greater protection than that outlined in the Confidentiality Order, Plaintiffs respectfully request that the Court grant leave to release the Lewis Report as redacted.

Respectfully submitted, this the 23rd day of March, 2006.

/s Melody McAnally
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¹ Although Defendants claim that “photos of one of the minor Plaintiffs appear on Children’s Rights’ website,” the Named Plaintiff in question is identified at all times by pseudonym, making it no easier for a “member of the general public” to identify him. It should also be noted that this Named Plaintiff is no longer a minor, and he appears on the website per his consent.

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CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2006, I electronically filed the foregoing and all enclosures with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

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